

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 RICHARD SIDNEY GAHAGAN,
5 Movant,

No. C 12-3165 CW
CR 11-0044 CW

6 v.
7 UNITED STATES OF AMERICA,
8 Respondent.

ORDER DENYING
CERTIFICATE OF
APPEALABILITY

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11 Movant has filed a notice of appeal of the Court's order
12 denying his § 2255 motion and a request for certificate of
13 appealability. Movant's right to appeal the Court's denial of his
14 section 2255 motion is governed by 28 U.S.C. section 2253(c),
15 which states,

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17 (1) Unless a circuit justice or judge issues a
certify of appealability, an appeal may not be taken
to the court of appeals from--
18 (A) the final order in a habeas corpus proceeding in
which the detention complained of arises out of process
issued by a State court; or
19 (B) the final order in a proceeding under section 2255.

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21 (2) A certificate of appealability may issue under
paragraph (1) only if the applicant has made a
substantial showing of the denial of a constitutional
right.

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23 (3) The certificate of appealability under paragraph (1)
shall indicate which specific issue or issues satisfy
the showing required by paragraph (2).

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25 28 U.S.C. § 2253(c)(1)-(3). The Ninth Circuit has interpreted the
26 phrase "circuit justice or judge" to include district court
27 judges. United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir
28

1997). A certificate of appealability should be granted "only if
the applicant has made a substantial showing of the denial of a
constitutional right." 28 U.S.C. § 2253(c)(2).

The Court certifies in accordance with 28 U.S.C. section 2253
that, for the reasons set forth in the order denying the § 2255
motion, none of the issues raised in the motion involves a
substantial showing of the denial of a constitutional right. The
certificate of appealability is denied.

IT IS SO ORDERED.

Dated: 9/19/2013


CLAUDIA WILKEN
United States District Judge